

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SERGIO L. SHAW,

Plaintiff,

v.

THOMAS JAHNKE, Dodge
Correctional Officer,

Defendant.

ORDER

08-cv-245-bbc

Plaintiff Sergio Shaw has submitted a proposed amended complaint within the deadline set forth in the magistrate judge's scheduling order. Dkt. #38. Under 28 U.S.C. § 1915, this court must screen the amended complaint to determine whether it states a claim upon which relief may be granted.

After screening plaintiff's original complaint, I allowed him to proceed on a claim under the Eighth Amendment that defendant Thomas Jahnke used excessive force against him on July 20, 2007 by causing him to fall on the ground, punching him in the face three times and restricting his ability to breathe. The only substantive difference between the original complaint and the amended complaint is that plaintiff includes a state law claim for

battery in the new complaint. The problem with this claim is that plaintiff does not allege that he filed a notice a claim in accordance with Wis. Stat. § 893.82(3m), which says that “a prisoner may not commence the civil action or proceeding [against a public employee] until the attorney general denies the claim or until 120 days after the written notice . . . is served upon the attorney general, whichever is earlier.” See also Ibrahim v. Samore, 118 Wis.2d 720, 726, 348 N.W.2d 554, 558 (1984) (“The notice of injury statute is not a statute of limitation but imposes a condition precedent to the right to maintain an action.”).

Accordingly, IT IS ORDERED that plaintiff Sergio Shaw may have until July 27, 2009, to show that he has complied with Wis. Stat. § 893.82(3m). If plaintiff fails to respond by that date, I will dismiss the state law claim.

Entered this 20th day of July, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge